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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1569

FIBREBOARD CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Respondents.

Reply Memorandum in Support of Petition for Writ of Certiorari

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The purpose of this memorandum is to call to the Court's attention a very recent decision of the Second Circuit Court of Appeals and to correct certain erroneous factual statements in the brief filed by the Solicitor General.

The Incorrect Factual Statements.

The erroneous treatment of the facts is to be found at page 5 of the Solicitor General's brief. It is there stated that the ILWU millwrights did not bargain for or receive any wage increase until 1961, at which time they were given the rates paid the ILWU production workers. This statement is

in error in two respects. First, in the period between the terminations in 1959 and the receipt of increases by the ILWU millwright in 1961, there were in fact discussions between Fibreboard and the Union in which discussions Fibreboard took (and maintained) the position that the millwright rates were "too high" (A. 541-544).* The Trial Examiner refused to credit the Union's testimony that the millwrights did not receive an increase during these two years because the business agent simply "forgot all about them" during this period (App., p. 37, n. 27)‡ and the Board did not disturb the Trial Examiner's findings in this regard. The second error is in the statement that in 1961 the ILWU millwrights were given the *same* rates as the Company's production workers, who were also represented by the ILWU. There was never any dispute over the fact that, while in 1961 and subsequent years the millwrights received the same *percentage* increase as the production workers, this increase was credited to a higher base rate of pay (*cf.*, A. 554-555; 562-564).

The Recent Conflicting Decision of the Second Circuit.

In the recent case of *William J. Burns International Detective Agency, Inc. v. NLRB,* 39 Law Week, page 2628 (April 26, 1971), the Second Circuit rendered a decision which further emphasizes the conflict between it and the Court below. The Court there held that the Board is without authority to order a "successor" employer to honor a collective bargaining contract agreed to by its predecessor for to do so would be to impose an agreement "upon an unwilling party" contrary to this Court's decision in *H. K. Porter Co., Inc. v. NLRB,* 397 U.S. 99 (1970). The Court below held

*Appendix to the briefs filed with the Court below.

‡Separate Appendix to Petition for Writ of Certiorari.

precisely the opposite in affirming an order of the Board which imposed contractual wage rates despite Fibreboard's demonstrated unwillingness to agree thereto.

Respectfully submitted,

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